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No. 03-468

IN THE
Supreme Court of the United States

ROY S. MOORE, Chief Justice,
Supreme Court of Alabama,

Petitioner,

v.

STEPHEN R. GLASSROTH, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MOTION OF NATIONAL CLERGY COUNSEL, INSTITUTE IN BASIC LIFE PRINCIPLES, AND INTERNATIONAL REAPERS FOUNDATION, INC. FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONER AND BRIEF *AMICI CURIAE*

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The National Clergy Counsel, Institute in Basic Life Principles, and International Reapers Foundation, Inc. hereby move, pursuant to Supreme Court Rule 37.2 to file a brief *amicus curiae* in support of the petition for a writ of certiorari to the Supreme Court of United States. This motion is filed because the parties have not consented to this *amicus curiae* brief.

The National Clergy Counsel is a Charitable organization which consists of pastors, priests, church leaders, and individuals from a variety of religious organizations and denominations representing several thousand people from every state in the Union. They believe the Ten Commandments represent the moral foundation of this nation and should be displayed publicly because of the tremendous moral direction it gives to people.

Institute in Basic Life Principles, a not-for-profit educational organization conducts seminars for judges, attorneys, legislators, families, young people, to enable them to deal with the particular pressure upon them resulting from their environment, their marriages, finances and the like amongst the eroding moral foundation of our nation. During the past approximately 38 years seminars having been conducted in major cities throughout the United States, Canada, and to some extent internationally, several million alumni have attended through word-of-mouth recommendations. They believe that failure to display the Ten Commandments publicly adversely affects the moral culture of this nation.

International Reapers is a not-for-profit Christian organization which networks resources for Christian leaders in some 35 or 40 third world countries. It corresponds with some 3000 leaders in those nations who are anxious about the moral leadership of the United States and in the world. The Ten Commandments are displayed, for example, in the embassy in Ethiopia and in Kenya. Leaders in these countries have expressed intense interest in the display the Ten Commandments publicly in United States because they believe it would be a positive influence in their own country and help establish a bridge for

relationships. Such cooperation on a universal standpoint, they contend, would help to establish peace where there is no peace.

This brief will assist the court in determining whether or not certiorari should be granted. Amici supports the reasoning of the petitioner with reference to the First Amendment as argued in their petition. Justice Souter in a case sometime ago noted that the court was following precedent since the *Everson* case in 1947 unless some "compelling reason" dictated otherwise. This brief, Amici contends, presents that compelling reason requiring the court to re-examine the position which it has taken since *Everson* on issues such as the one at bar.

This brief supports that reason on basically two grounds.

(1) The law which should govern the decisions in cases such as the one at bar is to be drawn from the meaning of the precise words as used in the founding documents. The terms, "Laws of Nature and of Nature's God" that are contained in the Declaration of Independence as incorporated in the Constitution by reason of the last paragraph under the phrase "and the 12th year," and underscored by the reference to a "Creator, " and "Law of Nations" as used in Article 1 § 8 of the Constitution when properly defined become the law of this land. Those terms do not establish a "religion," they establish the law which is not subject to alteration by a court's opinion. As will be discussed in the brief, there is substantial support for this position from the 1945 Nuremberg trials which were argued by Associate Justice Robert Jackson as the United States chief prosecutor

(2) The moral fiber of this nation is being destroyed by a lack of absolutes. In 1947, 171 years after the Declaration of Independence and contrary to previous legal precedent legal precedent, the Supreme Court in *Everson v. Board Of Education of Ewing TP.*, 330 U.S. 1 (1947) broke new ground in ruling on the public expression of God, declaring that the First Amendment created a "wall of separation between church and state." Since that date decisions have continued to erode the principles of God's law contrary to our founding documents.

Ignored was the legal content expressed in the documents themselves. Since that decision, by majority rulings of this court, Christian teaching and principles are systematically and relentlessly repressed in our public life in the language of" religious liberty;" educational institutions are subjected to atheistic teaching inconsistent with the Christian faith; the government and its philosophies presently control the educational system and have removed from that system any reference to God or Christian principles; no teaching from the Bible or even its display or discussion is permitted; by application oh "freedom of speech" obscene language and illustrations are permitted in characterizing the Christian faith and the Holy Scriptures; the influence of the Holy Scriptures is being totally removed from the public domain; Christian teachings have been deemed to stand in the way of individual liberty ; the individual's own idea of what is right or wrong in a moral sense must govern; absolutes no longer govern but only that which the courts declare; conduct which is a crime in the moral sense is regarded as innocent in law.

A few illustrations of such decisions would include: A students may not see the Ten Commandments since they might read, meditate upon, respect, or obey them. *Stone v. Graham,* 449 U.S. 39 (1980); *Ring v. Grand Forks Public School District*, 483 F. Supp. 272 (D.C. N.D. 1980); *Lanner v. Wimmer*, 662 F.2d 1349 (10th Cir. 1981); A school song was struck down because it promoted values such as honesty, truth, courage, and faith in the form of a "prayer." *Doe v. Aldine Independent School Dist*, 563 F. Supp. 883 (U.S.D.C., Tx. 1982); a public Cemetery may not have a planter in the shape of a cross. *Warsaw v. Tehachapi* CV F -90-404 EDP (U.S.D.C., E.D. Ca. 1990.); a classroom library may not contain any books which deal with Christianity, or for a teacher to be seen with a personal copy of a Bible in school. *Roberts v. Madigan*, 702 F. Supp. 1505 (D.C. Col. 1989), 921 F.2d 1047 (10th Cir. 1990), *cert. denied*, 112 S. Ct. 3025; 120 L. Ed. 2d 896. A war Memorial cannot be erected in the shape of a cross. *Lowe v. City of Eugene*, 451 P.2d 117 (Sup. Ct. Or. 1969), *cert denied*, 434 U.S.C. 76. A child may

not ask whose birthday is celebrated by Christmas. *Florey v. Sioux Falls School District*, 464 F. Supp 911 (U.S.D.C., S.D. 1979), *cert. denied*, 449 U.S. 987 (1980). In a high school class in Dixon, Tennessee, students were required to write a research paper using at least four sources. When Britney Seattle wrote a paper on the life of Jesus Christ she was given a zero by the teacher, even though students were permitted to write about reincarnation, witchcraft, and the occult. *Britney Kay Seattle v. Dixon County School Board*, 53 F.3d 152 (6th Cir. 1995), *cert. denied*, 64 L.W. 3478 (1995).

Every reference to God, Christian principles or the Bible are systematically being ordered removed not only from the schools but from every vistage of public life whenever and wherever challenged. At the same time students may attend school or enter public places wearing sweatshirts or other clothing espousing foul language, four letter words and anti-God statements. In the place of the foundational law of God and his absolute principles we are inheriting an atheistic society with its godless principles. The course of such legal decisions is not only in specific violation of our founding documents, but is destructive of the very foundation of this nation.

A decision recognizing the principles stated in this brief will assist in bringing peace to a troubled Judiciary as well as a confused society.

It is respectfully requested that this Court grant leave to file the attached brief of amicus curiae.

Respectfully submitted,

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INTEREST OF AMICUS IN THIS CASE[1]

Amici deal with people who are seeking to establish a firm moral basis for their life and their family amidst what is increasingly a moral chaos. Those in other nations look to the United States for moral leadership and stability which affects not only their own government but their very lives. In contrast to moral influence and example immorality by way of pornographic films and literature from the United States invades their land. Moral absolutes expressed by the government of the United States are a necessary influence.

In the meanwhile, Moral Evil, like Sennacherib's plundering army standing at the gate of Jerusalem in the time of King Hezekiah, cries out to the beleaguered citizens of the United States that hideous lie, "Surrender and you can live in peace in your land with wonderful crops and honey." To the contrary, death, torture, and enslavement is the result of such capitulation illustrated in the millions and millions of people who have suffered and are suffering in the clutches of an ungodly culture.

A ruling in this case recognizing the display of the Ten Commandments is essential in awakening the moral conscience of this nation. A strong national moral conscience is essential for national security

I. THE FIRST AMENDMENT

The first amendment does not restrict the *public expression of God*,[2] but such expression is warranted under the Constitution which thereby permits the display of the Ten Commandments. The First Amendment requires a "Law of Congress" which

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1. None of the parties have participated in the preparation or financing of this brief.

2. When the phrase "public expression of God" is used anywhere in this brief, it refers to any display or use of Biblical symbolism in any public place such as schools, courthouses, public squares, cemeteries, or any other public property or on which taxes are paid, and includes such things as the Ten Commandments, prayer, Bible reading or display of the Bible, and in general anything that has been challenged under the First Amendment.

language has a precise meaning. Congress has not passed any such "Law."

II. Precise meaning of the words used in the founding documents must control and is essential to proper construction

The founders mirrored their preconceived ideas and convictions in the Declaration of Independence and the Constitution with precise words in accord with "projection principle." That principal states that someone's convictions will dictate what he writes on the subject.

Respondent in *Newdow* unwittingly emphasizes that principal in his motion asking Justice Scalia to recuse himself claiming the statements alleged to have been made concerning the Pledge of Allegiance would govern his written opinion. Justice's Scalia affirmed that principal when honorably he did recuse himself. ***THE FOUNDING DOCUMENTS MUST BE READ WITH PRECISELY THE SAME PRINCIPLE IN MIND, RECOGNIZING THAT PREVIOUSLY[3] EXPRESSED CONVICTIONS OF THE FOUNDERS WOULD BE ENGRAFTED INTO THE DOCUMENTS THEMSELVES.***

A different thought process goes into creating a document in contrast to examining its meaning. In creating a document, words are selected that have precise meanings. The Greek "logos" means word. It is the root word for logic. It links words and reason. In 1776 words were designed to carry a specific meaning and thought. The founders of this nation were indoctrinated with that concept. Without electronics they read, wrote and talked.

Consequently when documents were drafted, the words used were carefully chosen to convey a precise meaning. Specific words were chosen after much debate. An honest evaluation of interpreting any document requires that preconceived idea of

3. "Previously" is specifically chosen because under long-standing rules of evidence subsequent statements or documents inconsistent with the document drafted are inadmissible to change its meaning. This certainly applies to the alleged interpretation given to Thomas Jefferson's letter concerning the First Amendment.

meaning should **not** be employed, only the meaning applicable at the time they were used.

James Madison declared[4]:

> I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable, more than for a faithful, exercise of its powers . . . *What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense.* (emphasis supplied)

Keeping in mind the principal that *convictions of the writer are projected into documents being drafted on the subject*, the following is essential in extracting the definition of the words used in the documents prepared by the founders[5]. The historical evidence of their activities, the resources they used for study, their speeches, etc. are all significant in discerning that definition. Definition of the words used at that time is relevant, **not today's** contemporary interpretation.

That the founders expressed publicly their beliefs and convictions concerning God and His law and religion is beyond debate. The very lives of those founders demonstrated their convictions. Words selected had a definite source describing

4. *The Writings of James Madison*, Gaillard Hunt, editor (New York and London: G.P. Putnam's Sons 1910) Vol. IX, p.191, to Henry Lee on June 25, 1824.

5. "Founders," as used herein, includes those who had a significant influence in, or provided prominent leadership for, or had a substantial impact upon the birth, development and establishment of America as an independent, self-governing nation. That obviously includes the signers of the Declaration of Independence, the 14 Presidents of America who led the Continental Congress, the delegates to the Constitutional convention, those who signed the Constitution, judges, governors, etc., as well as those who served in administrative capacity in the early years of this Republic experiment as Presidents, justices of the Supreme Court, and other of official capacities.

meaning, primarily Blackstone; although both Locke and Hooker denoted the same meaning. Premised on historical evidence the article by Kenneth Woodward and David Gates, "How the Bible Made America," *Newsweek*, December 27, 1982, p. 44, observed that the founders quoted the Bible more frequently than any other source and is indisputably a significant commentary in the foundation of our government. They conclude that "historians are discovering that the Bible, perhaps even more than the Constitution, is our Founding document." Their heritage stemmed from the faith of their forefathers as recorded in the charters of the colonies.[6]

Representative of virtually the whole, a truncated review of some of the founders religious associations, statements, and public declarations reveal the following[7]:

John Quincy Adams: Vice President of the American Bible Society and member of the Massachusetts Bible Society. **Abraham Baldwin*: chaplain in the American Revolution for two years[8]..*Joel Barlow* (diplomat under Washington and Adams): Chaplin in the American Revolution for three years. *Joseph Bloomfield* (Governor of New Jersey): member of the New Jersey Bible Society. *Elias Boudinot* (president of the Continental Congress): founder and first president of the American Bible Society; president of the New Jersey Bible Society; member of the American Board of Commissioners for foreign nations; member of the Massachusetts Society for

6. The charters of Virginia, Mayflower compact, First Charter of Massachusetts, Maryland, North Carolina, Rhode Island, Connecticut, New Hampshire, Georgia, and New Jersey, are a virtual restatement of each other in the belief in and propagation of the Christian faith.

7. Obviously this can only be an abbreviated representation because the preserved historical records are replete with conclusive illustrations that the founders had a hard-core conviction about God and his Holy Word. As a matter of fact they were the sturdy middle of society but today would probably be classified with what is inaccurately represented as the "far right."

8. *signer of Constitution;**signer of Declaration of Independence;***signer of both

promoting Christian knowledge. **Alexander Hamilton*: proposed formation of the Christian Constitutional Society to spread Christian government to other nations. **Rufus King:* selected as manager of the American Bible Society but refused so as to focus his attention on the Episcopal Bible Society. **John Langdon*: Vice President of the American Bible Society. **James McHenry*: President of the Baltimore Bible Society. ***Robert Treat Pain*: Military Chaplain. **Charles Pinckney*: President of the Charlestown Bible Society; Vice President of the American Bible Society. ***Benjamin Rush*: Founder and manager of the Philadelphia Bible Society. *Caleb Strong* (Constitutional convention; U.S. Senator; governor of Massachusetts): Vice President of the American Bible Society. *Increase Sumner* (Governor of Massachusetts): Member of the Society for Propagating the Gospel among the Indians and Others. Other founders were involved in similar organizations. None were atheists.

Jefferson encouraged a Day of Fasting and Prayer for June 1, 1774, *Writings*, Vol, I pp 9-10; he issued a proclamation for a Day of prayer and Thanksgiving while Governor of Virginia. (See *Official Letters of the Governor's of the State of Virginia*, H.R. McIlwaine, editor [Richmond: Virginia State Library, 1928] Vol. II pp. 64-66.

Madison, introduced bills for "Saving the Property of the Church;" "Appointing Days of Public Fasting and Thanksgiving;" "Annulling Marriages Prohibited by Levitical Law and Appointing the Mode of Solemnizing Lawful Marriage." The *Papers of James Madison*, Vol. III, pp 396.

John Jay, original Chief Justice of the U. S. Supreme Court "believed in Christ" and thanked God he did,. If there was no God there could be no moral obligations and he did not see how society could subsist without them. *Life*, Vol. II pp. 346-347.

Joseph Story, appointed to the U.S. Supreme Court by Madison was considered to be the founder of Harvard Law School and its Professor of Law (1829-45), expressed verbally

and in writing his belief in God and the declaration that this was a Christian nation following God's laws.

The first Continental Congress met in 1774; the second Congress met in Philadelphia in May, 1775. The representatives from the 13 States were sent home to each adopt Constitutions.[9]

CONNECTICUT: . . . .

being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; . . . . as the free Fruition of such Liberties and Privileges as Humanity, Civility and Christianity call for . . . (continued to operate under the charter of King Charles)

DELAWARE:

Every person who shall be chosen. . . . And also make and subscribe to following declaration, to wit: "I, A B, do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for ever more before ever more; and I do acknowledge the holy scriptures of the Old and New Testaments to be given by divine inspiration." . . . . There shall be no establishment of any one religious sect in this State in preference to another. . . .

NEW HAMPSHIRE:

Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, ... As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, ... through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion; . . . . do hereby fully impower the legislature to authorize from time to time, the

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9. The 13 states adopted new constitution's which were for the most part submitted to a popular vote; Massachusetts and New Hampshire's constitutions were done by convention and ratified by popular vote. For the most part all stood for 50 to 75 years with Massachusetts getting its and overhauling in 1917-18.

several towns, parishes, bodies-corporate, or religious societies within this state, to make adequate provision at their own expence, for the support and maintenance of public protestant teachers of piety, religion and morality . . . And every denomination of christians . . . shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

MASSACHUSETTS:

It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator, and Preserver of the universe. . . . As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality: Therefore . . . the legislature shall from time to time authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God... Any person chosen governor,[etc] . . . subscribe the following declaration, viz: . . . . I . . . do declare that I believe the Christian religion, and have a firm persuasion of its truth; . . . .

NEW JERSEY:

XVIII. . . . no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor, under any pretence whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing any other church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what

he believes to be right, ... XIX. That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles. . . .

GEORGIA:

. . . . All persons whatever shall have the free exercise of their religion. . . . : and shall not, unless by consent, support any teacher or teachers except those of their own profession

NEW YORK:

. . . . the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind . . . .

NORTH CAROLINA: . . .

. . . . all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences him. . . . no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, ... shall be capable of holding any office . . . . in the civil department within this State . . . . XXXIV . . . . shall be no establishment of any one religious church or denomination in this State, in preference to any other; . . . .

SOUTH CAROLINA: . . .

. . . . all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State. That all denominations of Christian Protestants. . . . shall enjoy equal religious and civil privileges. . . . 1st. That there is one eternal God, and a future state of rewards and

punishments. . . . God is publicly to be worshipped. . . . That the Christian religion is the true religion. . . . That the holy scriptures of the Old and New Testaments are of divine inspiration, and are the rule of faith and practice. . . . No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship. . . .

MARYLAND: . . .

. . . as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; . . . . the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion. . . . all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed. . . . That . . . . oath of office, as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion . . .

PENNSYLVANIA:

We . . . . confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) . . . . all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship . . . each member [of the house of representatives], before he takes his seat, shall make and subscribe the following declaration, viz I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration. . . . no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State. . . .

While each of the constitutional provisions very to some extent, it is **very** clear that they averred the recognition of God, His Law, and that He is to receive public veneration. It was these various declarations that were to be harmonized in the founding documents of a new nation.

Consistent with their intense conviction that the people recognize God and his Word as governing in the new nation, on September 11, 1777 Congress ordered 20,000 Bibles imported.[10] On September 12, 1782 the full Congress approved the printing of the first English-language Bible ever printed in America. The following endorsement was printed in front of that Bible:

> Whereupon, Resolved, That the United States in Congress assembled . . . recommend this addition of the Bible to the inhabitants of the United States.[11]

A plethora of historical evidence that would fill volumes, certainly proves beyond a reasonable doubt that a universal conviction existed among the founders of the reality of the God of the Bible and His Law. Such Christian belief was to be part of the public forum. It was unquestionably part of the Common Law.

The Supreme Court of the United States in *Rector, Etc., of Holy Trinity Church v. United States*, 143 U.S. 457, 12 S. Ct. 511 (1892), reviewed the religious history of this country from the colonial charters through various State Constitution's to the date of the opinion. All 44 states at that time contained language which "directly or by clear implication recognizes a profound reverence for religion, and an assumption that its influence in all human affairs is essential to the well-being of the community." Delaware's was cited which proclaimed "Faith in God and the Father and in Jesus Christ his only Son and in the Holy Ghost. . . . acknowledge the Holy Scriptures of the old

10. *The Second Report of the Managers of the New-Jersey Bible Society*, p. 14.

11. *Journals of . . . Congress* (1914), Vol. XXXIII p. 574, September 12, 1782.

and New Testament to be given by Divine inspiration," illustrated the nation's position on God and his involvement in public affairs. The court asserted that "this is a Christian nation" not Muslim or Grand Lama. *Holy Trinity* is flatly contradictory of the majority opinions of the Supreme Court rendered since 1947 asserting "separation of church and state." In trial work the closer in time the witness is to the actual happening of events, the more accurate the analysis is of the situation.

It is significant to note that of the 55 delegates to the "constitutional convention," only 39 signed because of their ardent fear the federal government would usurp their sovereign rights. That fear delayed ratification until the spring of 1790 when Rhode Island finally ratified. At that time Congress was already in the process of crafting amendments to the Constitution to address the "sovereignty" issue. Evidenced by the religious content of each State Constitution, it would defy plain logic to conclude the First Amendment was intended to remove God from government. The amendment simply assured the sovereign states, *that Congress would not pass a law which established a particular denominational church.*[12] Certainly supporting this reasoning by implication is that some of the State Constitution's prevented a minister or religious leader from holding office lest a particular denomination attempt to establish a particular state church.

THE PRECISE WORDS AND PHRASES CHOSEN BY THE FOUNDERS DICTATE THE GOVERNING LAW

A comment of Justice Scalia in *Harper v. Virginia Department of Taxation*, 113 S. Ct. 2510 (1993), started me on a search for applicable law in a different direction when he stated:

> The conception of the judicial role that he possessed, and that we shared by succeeding generations of American judges until very recent times, took it to be 'the province and duty

12. *Blackstone's Commentaries* further support that conclusion by using the term "religion" as referring to the government established Church of England.

> of the judicial department to say what the law is,' (citation omitted), not what the law shall be. That original and enduring American perception of the judicial role sprang not from the philosophy of Nietzsche but from the jurisprudence of Blackstone . . .

Establishing the meaning of critical provisions of the founding documents at the time the documents were drawn is absolutely essential to determine what law governs the "public expression of God.[13]

The precise terminology used in the Declaration of Independence, the Constitution, and the Bill of Rights develops a pattern of explanation which becomes self-evident: aided by the relevant evidence recited earlier in this brief.

Material terms in the documents are as follows:
(All emphasis are added)

Declaration of Independence:

> ***Which the Laws of Nature*** and of ***Nature's God*** . . . . ***endowed by their Creator*** with certain unalienable Rights, First among These Are Life, Liberty and the Pursuant of Happiness . . . . appealing to the ***Supreme Judge of the World*** . . . . with a firm reliance on the ***Protection of Divine Providence***, we mutually pledged to each other our Lives, our Fortunes, and our sacred Honor.

Article, § 8 of the Federal Constitution is relevant to the pattern and states:

> To define and punish piracies and felonies committed on the high seas, and offenses against the ***Law of Nations***.

Article VI of the Constitution provides in the third paragraph thereof:

> The Senators and Representatives before mentioned and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by **Oath or Affirmation**, to support this Constitution; . . . .

13. Footnote 2 contains the definition of this phrase as used in this brief.

Article VII of the Constitution provides in the last paragraph thereof:

> Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the ***Year of Our Lord*** one thousand seven hundred and Eighty-seven ***and of the Independence of the United States of America the Twelfth***. In Witness whereof, We have hereunto subscribed our Names, [George Washington-President and deputy from Virginia, etc]. (emphasis supplied)

The First Amendment provides in pertinent part:

> Congress shall make no ***law*** respecting ***an establishment of religion***, or ***prohibiting*** the free exercise thereof; . . . .

Amendment X of the Bill of Rights provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Careful examination of each State Constitution reveals recitation of the authority of God although with different verbiage. There was of course corporate recognition of God by use of the term *Creator*, *Supreme Judge of the World*, and *Protection of Divine Providence*. The thorny part of the issue was how to harmonize and condense the variety of expressions into a compact document they were endeavoring to draw.

The key is the Declaration Of Independence and the accuracy of the words employed: *Creator*, *Laws of Nature* and *Nature's God*. Those universally recognized terms which satisfied all 55 signers because they had a definite and declared meaning.

Blackstone's *Commentaries on the Laws* introduced in 1766 exported the meaning. Blackstone's Commentaries became THE law book of the Founding Fathers. Numerous early American lawyers, legal scholars, and publications cited Blackstone's work as a key legal source. For example, Blackstone is invoked as an authority in the writings of James Kent, James Wilson, Fisher aims, Joseph story, John Adams, Henry Lawrence, Thomas

Jefferson, James Madison, James Otis, et al. In fact so strong was it's influence in America that Thomas Jefferson once quipped that American lawyers used Blackstone with the same dedication and reverence that Muslim's used the Koran.[14] A complete reading and analysis of Blackstone's *Commentary* demonstrates the categorical recognition of God and the Bible and the terms to which he gives specific definition. A truncated explanation follows:

> Law, in it's most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the *LAWS OF NATURE AND OF NATIONS*. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.
>
> Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. This will of his Maker is called the *LAW OF NATURE*. For as God, when He created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with free will to conduct himself in all parts of life, He laid down certain immutable laws of human nature, whereby that free will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.
>
> This *LAW OF NATURE*, being coeval with mankind and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; . . . . he has laid down only such laws as were founded in those relations of *justice*, that existed in the *nature of things* antecedent to any positive precept. These are *the*

14. *Writings of Thomas Jefferson*, Albert Bergh, editor-Washington DC: The Thomas Jefferson Memorial Association, 1904, Volume 12, Page 392, to Governor John Tyler on May 26, 1810.

> *eternal, immutable laws of good and evil* . . . he has . . . so inseperably interwoven the laws of eternal *Justice* with the *happiness of each individual, that the latter cannot be obtained but by observing the former* . . . the doctrines thus delivered we called the revealed or divine law, and are to be found only in the *Holy Scriptures*... upon these two foundations, the law of nature and the law of revelation, depend all of human laws; that is to say no human laws should be suffered to contradict these.

Locke employs the same definition:

> The *Law of Nature* stands as an eternal rule to all men, legislate doors as well as others. The rules that they make for other men's actions must. . . . be conformable to *the Law of Nature*, i.e. to the will of God.[15]

Richard Hooker, a favorite of Locke and many of the founding fathers, referenced the *law of nature* as coming from the Scripture which was filled with *Laws of Nature.*[16]

The term "Creator" found in Blackstone and used in the Declaration of Independence and the term *Law of Nations* found in the Constitution, Article I § 8 furthers supports the use of Blackstone, and his definition of the terms incorporating them directly into the Constitution.

Article VII of the Constitution then legally engrafts the Declaration Of Independence into the Constitution as effectively as though it had said, "attached hereto and made a part hereof," by the declaration ". . . by the unanimous consent of the States present the 17th day of September in the *year of our Lord* one thousand seven hundred and eighty seven, *and of the independence of the United States of America the twelfth.* As a direct consequence, all the terms as defined above are fused into the Federal Constitution, and thus become the governing Law of this land. Each of the original 13 states adopted the

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15. John Locke, *Two Treaties*, Book II, p. 285, Chapter XI, § 135.

16. *The Works of That Learned and Judicious Divine, Mr. Richard Hooker*, Vol. I pp, 148, 207, 230, 427.

Declaration of Independence as part of their law as have each of the states admitted to the union since that time all of which are bound by the terms of the Declaration.

The "oath" is another corroboration that a supernatural and eternal God and his Law have been engrafted into our Federal documents. The purpose of the oath is rooted in antiquity premised on the fact that man will die and then face his maker. God is eternal and is a giver of rewards and punishments. The oath is a prerequisite part of legal life. Blackstone's commentary on that issue puts it this way:

> OATHS: Doubtless the preservation of Christianity, as a national religion, is, abstracted from it's own intrinsic truth, of the utmost consequence to the civil state: which a single instance will sufficiently demonstrate. The belief of a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the Supreme Being; and a firm persuasion that he superintends and will finally compensate every action in human life, (all which are clearly revealed in the doctrines, and forcibly inculcated by the precepts, of our saviour Christ) these are the grand foundation of all judicial oaths; which call God to witness the truth of those facts, which perhaps may be only known to him and the party attesting.

The war trials at Nuremberg following World War II emphasize the significance of a national moral underpinning. The trials began on November 20, 1945. Count one of the indictment included the charge of "Crimes against Humanity." The record discloses Justice Jackson's description of the evidence which was designed on the part of the defendants to destroy the moral fiber of the people of Germany. That evidence disclosed the Christian Church must be silenced.; the government and its philosophies must control the educational system and remove from that system any reference to God or Christian principles; a document introduced into evidence asserted "of course, any such program must reckon with the opposition of the Christian Church. This was recognized from

the beginning. . . . national Socialism and Christian concepts are irreconcilable, and the people must be separated from the churches and the influence of the churches totally removed." Justice Jackson argued:

> The refuge of the defendants can be only their hope that international law will lag so far behind the moral sense of mankind that conduct which is crime in the moral sense must be regarded as innocent in law. . . . the law is not only to govern the conduct of little men, but that even rulers are, as Lord Chief Justice Coke put it to King James, 'under God and the law.'

The importance of that evidence from the Nuremberg trial and justice Jackson's arguments is it demonstrates the requirement of a firm national moral basis to stand against evil.

The founders recognized the necessity of the recognition of God both in government and in the public forum representing a concept of eternity, morality, accountability, and charity.

Think of how that concept of eternity and God comes through in our corporate experience of science and discovery. In the 1960s when the American astronauts were the first ones to go round the dark side of the moon, and fired their rockets on that homeward journey, they were given a glimpse of this universe that had not been given to any other human eye. As they saw Earth rise over the horizon of the moon draped in a beauteous mixture of blue and white, garlanded by the glistening light of the sun against the black void of space, they experienced what no language could express. So from tens of thousands of mile away those of us who were living at that time on planet Earth heard from them the only words which they deemed appropriate to pull that experience together: "In the beginning God."

Our court decisions over the past 50 years have in increments extracted from our public life and our educational system the concept of an eternal God and the reality of eternity. That vacuum has been filled, without any counterbalance from

the Word of God, with the teaching of Darwin's philosophy of evolution as though that represented scientific truth. The background for that teaching is the "God is dead and we have killed him" philosophy of the German atheist Frederick Nietzsche. If God is dead then the only thing left is human reason. Thus was developed the theory of positive law. Nietzsche reduced everything in life to the will for self-assertion. Since God-given values were dead, it was up to humans to create their own values. Then in 1859 Charles Darwin published his book on macro-evolution, "On the Origin of Species." Agreeing with Darwin, Karl Marx said, "In our evolutionary concept of the universe, there is absolutely no room for either a Creator or a Ruler."[17] So parroting Darwin's philosophy of evolution and Nietzsche's nihilistic philosophy, we are educating our young people that "Now" is all we have because there is no tomorrow.

That rule of relativism is not only not working, it is the antithesis of the law of this land as established in our founding documents.

The serious consequences of the violation of those foundational principles are embedded in our national history. From the inception of the United States of America, despite the firm declaration in its founding documents that "all men are created equal," and although many of the Founders had feelings against slavery that went beyond words, this nation violated "the Creators" fundamental law of equality. That violation was abetted by the dishonest "politics and morality" of the justices who combined to produce the infamous decision in *Dred Scott v. Sandford*, 60 U.S. (19 Howell) 393 (1857). Justice Taney was a Southern partisan who was determined to create a constitutional right to own slaves, not only in violation of the Declaration of Independence, but the statute of a state which forebode it. To accomplish that he simply changed the plain meaning of the due process clause of the Fifth Amendment. As a direct result of the violation of the law of our "Creator" by

17. Marx and Engles On Religion, NY: Schocken 1964, page 295.

slaveholders, including Christian slaveholders, judges and politicians, in 1861 this nation became embroiled in a bloody and devastating Civil War with its tragic and divisive consequences, the resulting shadow under which we still live.

Sen. Joseph Biden illustrates the anti-God documents philosophy that is attacking our founding documents that the sole source of moral law comes from the human mind not from any higher power. In resisting the nomination of Judge Clarence Thomas to fill a vacancy on the United States Supreme Court bench in 1991, he feared that the judge would use his belief in natural law as a means of interpreting the Constitution. In an essay he authored (Philip E. Johnson, "Reason in the Balance," Downers Grove, Illinois: Intervarsity, 1995, page 134) he stated:

> 'Good' natural law does not dictate a moral code to be imposed upon individuals. Finally, 'good' natural law is not a static set of 'timeless truths' but rather an evolving body of ideals that change to permit government to adjust to new social challenges and new economic circumstances. 'Bad' natural law, by negative implication, would be an unchanging moral code that restricts either the freedom of individuals to do as they think best, or the freedom of government to do whatever the public interest requires.

The consequence of that thinking adopted by the court system resulting in the gradual extraction of God from our public life as has been going since 1947 is reflected in the moral condition of the nation today. A few statistics demonstrate the following commencing with the year 1963 until 1993: birthrates for unwed girls 15-19 years of age rose from 15 to 45[18]; violent crimes from approximately .25 million to 1.9 million[19]; in the age group of 10-14 sexually transmitted diseases have gone from 14 to 70 per 100,000 total population in 1990 and then dropped

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18. Basic data from Department of Health and Human Services and statistical abstract of the United States.

19. Basic data from statistical abstract of the United States, and the Department of Commerce, Census Bureau.

back to 54 in 1993[20]; SAT total scores and dropped from 1980 to 910 in 1994[21]; family stability, that is single-parent households with a female head, no spouse present have risen from 5 million households in 1963 to 12 million in 1993-94.[22]

Such thinking is a total aberration of the content that is fused into our founding documents.

It is condign that those principles are to control rather than the peripatetic interpretations by our courts on the subject since *Everson v. Board of Education of Ewing TP.*, 301 U.S. 1 (1947), no matter how wonderfully worded. It is apodictic that the "founders" acknowledged those "foundational principles," which are uniquely condensed in the provisions of our Constitution. Consequently our Constitution specifically acknowledges God and His Law as part of the public life of this nation and requisite for public expression.

As Alexander Solzhenitsyn said: ". . . . Between good and evil there is an irreconcilable contradiction. One cannot build one's national life without regard to this distinction." He reviews the monstrous price of death and slavery that was paid by millions and millions of people in the Soviet Union as a result of the denial of that distinction. He would like to have us "accept" their experience without having to pay that hideous price.

CONCLUSION

The writ of certiorari should be granted the lower courts reversed permitting the display of the Ten Commandments in the Supreme Court of Alabama as well as anyplace else in these United States and public buildings.

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20. Basic Data from the Center for Disease Control in Department Of Health And Human Services.

21. Basic Data from the College Entry Exam Board, New York.

22. Basic data from statistical abstract of the United States, and the Department of Commerce, Census Bureau.

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